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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/008,640	11/08/2001	Robert McNeil	OHH-P-23	3204

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EXAMINER	
OLSZEWSKI, JOAN M	

ART UNIT	PAPER NUMBER
3643	

DATE MAILED: 01/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/008,640	MCNEIL, ROBERT	
	Examiner	Art Unit	
	Joan M. Olszewski	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *amendment filed 12/12/03*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *12/12/03* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

FINAL REJECTION

This is in response to Applicant's amendment filed December 12, 2003. Currently, claims 1-19 are pending in this application.

With respect to the drawing corrections these are acceptable by the Examiner.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1- 6 and 10-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rainey, Jr. (U.S. Patent 5,259,809) in view of Holt (U.S. Patent 5,177,891).

Regarding Claims 1,4,10 and 14, Rainey, Jr. discloses a method (Abstract) and apparatus (14) for directly attracting marine crustaceans (6) to a desired location, as well as teaching that it is well known in the art to use combinations of light, scent, and sound to attract animals to traps (column 1, lines 24-25). Rainey, Jr. does not show the use of a sound emitting attractor formed of a watertight container having an exterior surface housing, a power supply and storage means containing a recording of the sound of moving water or a sound transmission means for transmitting the recorded sound from the desired location and the sound transmission means also being located in the container. However, Holt discloses a sound emitting attractor having a watertight container (200) having an external surface (Figure 2), having a power supply (203), storage means (204) capable of containing a recording of background sounds that are known to attract fish (column 3, lines 1-20) such as the sound of underwater disturbances produced by fish

swimming or rapidly turning would inherently create and include the sound of moving water or waves, and a speaker (224,225) for transmitting the sound. Further, once it is recognized that sound can be used to attract animals it would be obvious to select a desired background sound based on the likes of the animal trying to be attracted.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the device of Rainey, Jr. by using a sound transmitting device as taught by Holt, as detailed above, since in doing so one is merely replacing one known type of attractant for another which is recognized by Rainey, Jr. in column 1, lines 24-25. Further, the sound of bait is a normal background sound found in the habitat of all animals and as such is considered to constitute background sound. Further, underwater disturbances produced by fish swimming or rapidly turning would inherently create and include the sound of moving water or waves.

Re- Claims 2,5,12,16 and 18, Rainey, Jr. as modified by Holt, discloses all the claimed features including a method (Abstract) and apparatus (14)(Rainey, Jr.) for attracting a marine crustacean. Rainey Jr. does not specify the marine crustacean as a lobster. However, examiner maintains that the class Crustacea includes both lobster and shrimp and therefore to modify a trap to catch one or the other would be dependent only on the location and sound generated.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have recognized that the trap of Rainey, Jr. as modified by Holt, could have been easily used to trap lobsters as well as shrimp.

Re-Claims 3,6,13,17 and 19, Rainey, Jr. as modified by Holt, discloses all the claimed features including a method (Abstract) and apparatus (14)(Rainey, Jr.) being located in a lobster trap since the structure is used to confine Crustacea.

Re- Claims 11 and 15, Rainey, Jr. as modified by Holt, discloses all the claimed features except for the attractant sound being one of water gurgling or splashing through a vent in a lobster containment area. However, Examiner maintains that since it is recognized that different sounds can be used to attract lobsters it would be obvious to use sounds such as "gurgling or splashing" in order to attract a lobster.

Claim Rejections - 35 USC § 103

Claims 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rainey, Jr. as modified by Holt as applied to claims 1-6 above, and further in view of Rodgers (U.S. Patent 5,697,182).

Re- Claims 7 and 9, the combination of Rainey, Jr. and Holt as discussed in the rejections above discloses all the claimed features except for the an external switching means comprising electrical contact points that are wired to the power supply to form a partial electrical circuit and wherein submersion in water completes the electrical circuit and activates sound transmission. However, Rodgers teaches the use of an external switch (20), having electrical contact points (11,13) connected to a battery (26) thus forming a partial electrical circuit when placed in water (column 6, lines 23-25).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the combination of Rainey, Jr. and Holt device by utilizing

an external switch with electrical contact points connected to a battery which when placed in water forms a partial electrical circuit as taught by Rodgers in order to provide easy activation of the switch.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rainey, Jr. as modified by Holt as applied to claims 1-6 above, and further in view of DuMont (U.S. Patent 5,331,760).

Re- Claims 7 and 8, the combination of Rainey Jr. and Holt as discussed in the rejections above discloses all the claimed features except for a manual external switching means for activating and deactivating an attractant device prior to, during placement, and after removal form the desired location. However, DuMont teaches the use of a manual, externally located switch (24) for controlling a device.

Therefore, it would have been obvious to one of ordinary skill in the art to have modified the combination of Rainey, Jr. and Holt device to include a manual external switch to control the operation of the device in order to provide an easily accessible mechanical means to activate and deactivate the sound system so as to conserve energy when not needed and to prolong the life of the battery.

Response to Arguments

Applicant's arguments filed December 12, 2003 have been fully considered but they are not persuasive.

Applicant argues that the combination of Rainey, Jr. and Holt fails to teach the use of a stimulus to directly attract a crustacean. However, the combination above does

teach that a sound generating means can be used to attract an animal. While Rainey, Jr. teaches the use of light to attract bait food, he also recognizes that the prior art utilizes sound, light or scent to attract animals (column 1, lines 24-25). The Holt device (column 3, lines 1-20) teaches that numerous types of sounds could be used to attract animals. More specifically, Holt recognizes that the sounds of a bait fish would be effective and the sound of a bait fish would inherently be that of moving water. Thus, as explained in the rejection above, the combination of Rainey, Jr. and Holt would teach the use of a sound emitting means generating the sound of moving water to attract animals. Further, with respect to the apparatus claims the type of animal attracted is an intended use and it is the Examiner's position that the sound of a bait fish would attract a crustacean, especially a lobster. Further, with respect to the method claims the combination of Rainey, Jr. and Holt is considered to meet the claim limitations since the sound of moving water created by bait fish would inherently attract a lobster. Applicant also points to Holt (column 6, lines 1-20) and indicates that this citation by the Examiner does not discuss the sound of moving water. The rejection above now points to column 3, line 1-20 of Holt to show these features.

Applicant also argues that a swimming fish would not generate the sound of moving water. However, the Examiner disagrees since anything that moves water such as the fin of a fish would create a sound and that sound would be of moving water.

As for the suggestion to combine Rainey, Jr. and Holt, the Holt device was relied upon only to teach the use of a specific type of sound to attract animals and since Rainey, Jr. suggests that sound is known to attract animals Rainey, Jr. provides the

motivation for the combination. As for modifying a shrimp trap to trap lobsters, both of these types of crustaceans live in similar environments and the basic designs of traps for both are the same. The only factor effecting the use is the size of the openings and to adjust the opening to accommodate the animal desired is well known in the art and further is only an intended use of the apparatus.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joan M. Olszewski whose telephone number is 703-305-2693. The examiner can normally be reached on Monday-Friday (5:30-3:00) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703-308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Joan M. Olszewski
Examiner
Art Unit 3643

JMO

1/27/04